



City of Johnson City Tennessee

601 East Main Street • P.O. Box 2150 • Johnson City, TN 37605 • (423) 434-6000

BOARD OF ZONING APPEALS CITY OF JOHNSON CITY, TENNESSEE

Minutes of the Meeting of
April 9, 2013

The Board of Zoning Appeals held its meeting on April 9th at 9:00 a.m. in the City Commission Chambers of the Municipal and Safety Building.

Members Present

Jeff Benedict, Vice-Chairman
Dwight Harrell
Steve Meroney
Jamie Povlich
Tim O'Neill, Chairman

Staff Present

Steve Neilson, Development Coordinator
Jessica Harmon, Planner

Mr. O'Neill called the meeting to order.

Election of a Board Chairman and a Board Vice-Chairman

MOTION: Harrell **To approve Mr. Benedict as Chairman of the Board of Zoning Appeals**

SECOND: O'Neill

VOTE: Approved 4-0-1

MOTION: Benedict **To approve Mr. Harrell as Vice Chairman of the Board of Zoning Appeals**

SECOND: Meroney

VOTE: Approved 4-1

Minutes

The Minutes of the March 27th called 12, 2013 meeting were considered for approval.

MOTION: Povlich **To approve the minutes of the March 27, 2013 meeting.**

SECOND: O'Neill

VOTE: Approved 4-0

Case No. 769-1 and-2

Mr. Neilson indicated that this was a request by Tri-Cities Holding LLC for a Special Exception approval for a methadone treatment clinic at 4 Wesley Court. The property is zoned MS-1. Mr. Neilson stated the conditions for a methadone clinic. He then stated that the petitioner was requesting a variance to two of these provisions. The petitioner is requesting a variance to the hours of operation from 7:00 a.m. to 5:00 a.m. and to the condition that the facility be located on and have access to an arterial street. Wesley Court was a cul-de-sac and is considered a local street. He stated that if the Board chooses to approve these variances, the approval should be conditioned upon the petitioner getting a certificate of need from the state.

Mr. Neilson stated that in order to justify any variance, the Board must find that due to exceptional narrowness, shallowness or shape, topography or unique characteristic to the property which make it difficult to use the land. Hours of operation and location on an arterial street are not conditions that relate to the specific physical characteristics of the property. In addition, there is no hardship on the property. There is currently a 8,200 square foot building located there. In the past the building had been used as the former Sear's Service Center and more recently, "The Oaks", a fellowship center.

He stated that under Articles 15.4.2 the Board must observe any conditions imposed by this Code regarding any special exception use permitted. The Board really has no delegated authority to grant variances to the requirements. He stated that in staff's opinion, there is nothing unique about the specific piece of property to justify approval of a variance. In addition, the Board is without delegated authority to approve a variance even if it wished. He then recommended denial of the variance and special exception requests.

Joel Conkin of Wilson, Worley, Moore, Gamble, and Stout representing the petitioner asked for this item to be deferred until the next meeting. Steve Kessler, owner of Tri-Cities Holdings had a conflict and could not attend.

Mr. Meroney stated that since the board had no power to grant the special exception he did not see any reason to defer this item. He then made a motion to deny the request. Mr. Benedict stated that he felt it was appropriate to defer this item a month to allow the petitioner to argue that Mr. Neilson's position was incorrect. Mr. Harrell asked Mr. Compton under what special exception provisions did he feel allow the Board to grant a variance. Mr. Conkin indicated that this was a unique situation, in that they are requesting reasonable accommodate under the Americans with Disabilities Act. Federal law would trump any local ordinances. In addition, under Section 15.4.3 states: "To hear and decide applications for variance from the terms of this Code.... other extraordinary or exceptional situation or condition of a piece of property, the strict application of the provisions of this Code would result in practical difficulties to or undue hardship upon the owner of such property". Mr. Conkin stated that he felt that this was an extraordinary situation in that in order to comply with the Americans with Disabilities Act, the Board is required to grant this variance in order to eliminate the illegal provision in the Zoning Code.

Mr. Harrell has Mr. Erick Herrin if he had anything that he felt was important to add. Mr. Herrin gave an overview of the Board's authority. He stated that there were two criteria imposed by the City Commission which the petitioner did not meet.

MOTION: Meroney

To not to defer this item.

SECOND: Harrell

VOTE: Approved 3-2.

Mr. Jim Dunlap representing Tri-Cities Holding spoke in favor of the request. He described the proposed opiate treatment. He stated that the closest opiate program is more than 50 miles away. He indicated that many of the people who are addicted to opiates due to back injuries and some were returning veterans. Under the Americans With Disability Act, these people are considered disabled and local governments are under a legal obligation to accommodate them. In addition, under the Rehabilitation Act of 1973, if a local government accepts federal funding it agrees not to discriminate against disabled people. He indicated that this issue has been addressed in the Supreme Court and strongly advised the Board to grant this permit.

Mr. Conkin pointed out that there were conflicts in the Zoning Code. He indicated that the number of sites which allowed methadone clinics was limited and the Zoning Ordinance effectively zoned out them out. He stated that it was illegal to discriminate against opiate addicted people under federal law and asked the Board grant the variance request.

Mr. Pete Adams, the property owner spoke in favor of the request.

Mr. Meroney requested that Mr. Neilson read an email from Anthony Valk, a neighboring property owner who opposed the request.

Mr. Herrin stated that the city is not insensitive to individuals with additions. There are facilities in the city to address their need. In addition, he provided a map that show a number of sites where methadone treatment clinic could locate.

Mr. Conkin indicated that he would provide an expert medical opinion if the Board deferred this item until next month. Also,

Mr. Meroney stated that the bylaws stated in order to approve a special exception it must meet certain criteria. Mr. Harrell stated that the Board must observe any conditions imposed by this code regarding any special exception. The hours of operation and the location having access from an arterial street are not met. He then moved to deny the request.

MOTION: Harrell

To deny this request.

SECOND: Meroney

VOTE: Approved 5-0.

Case No. 769-3

Mr. Neilson stated that this was a request for special exception approval to allow the construction of a communication tower at 2423 Susannah Street. The property is zoned B-4, Planned Arterial Business District and MS-1, Medical Service District. The petitioner is the Washington County Emergency 911 Center. He stated that under the MS-1, tower structures may be allowed provided they are at least 50 feet from a non-residential district. The site plan provided shows the proposed structure location 50 feet from the adjoining property line zoned MS-1 District. The petitioner met the conditions for special exception and recommended approval.

Bob McNeil representing E-911 spoke in favor of this request. He indicated that the pole would not exceed 100 feet.

MOTION: Harrell To approve this special exception request

SECOND: Meroney

VOTE: Approved 5-0.

Case No. 769-4

Mr. Neilson indicated that this was a request for a variance to the rear yard setback in order to replace an existing deck with a sunroom at 26 Cherokee Ridge Court. The property is zoned RP-3, Planned Residential District. The petitioner was setback in order to enclose a deck at 26 Cherokee Ridge Court. The property is zoned RP-3, Planned Residential District. Ms. Margaret Sullenger is the petitioner.

He stated that the property is unique situation in that when this development was originally approved in 1997, Cherokee Ridge Court was a private drive. However, in 2009 the street became a public street, which changed the building setbacks. Up to this point, Cherokee Road was considered the front yard and the petitioner's current rear yard was considered a side yard. However, when Cherokee Ridge Court became a public street, that property line became the rear yard. Because this is a unique situation which would have minimal impact on adjoin properties, Staff recommended approval of this request.

Ms. Sullenger spoke in favor of this request.

Mr. Meroney indicated that he recalled similar requests in this development which the Board approved. He stated that he felt that this would have minimal impact on the surrounding property and recommended approval.

MOTION: Meroney To approve this variance request

SECOND: O'Neill

VOTE: Approved 5-0.

Case No. 769-5

The petitioner, Mr. Marvin Carter was not present at the meeting. Mr. Harrell stated that in the past, if the petitioner was not at the meeting, the Board has deferred the item in order to allow the petitioner to adequately present their case. He then motioned to defer the item until the next meeting.

MOTION: Harrell To defer this variance request until next meeting

SECOND: Meroney

VOTE: Approved 5-0.

There being no further business, the meeting adjourned at 10:09 a.m.

APPROVED:

Jeff Benedict, Chairman
Board of Zoning Appeals